

Bill No. SB 186

Barcode 391288

Proposed Committee Substitute by the Committee on Health Care

1 A bill to be entitled

2 An act relating to the testing and reporting of

3 human immunodeficiency virus; amending s.

4 381.004, F.S.; prohibiting the disclosure of a

5 positive preliminary HIV test result to any

6 person except as specifically authorized;

7 providing that certain HIV test results are

8 preliminary and may be released in accordance

9 with federal requirements; providing that a

10 pregnant woman's informed consent is not

11 required; amending s. 384.25, F.S.; requiring

12 the reporting of a result indicative of HIV or

13 AIDS; requiring the Department of Health to

14 adopt rules specifying certain information,

15 including the maximum time period for reporting

16 a sexually transmissible disease; requiring the

17 use of a system developed by the Centers for

18 Disease Control or its equivalent for the

19 confidential reporting of HIV infection or

20 AIDS; requiring the department to adopt rules

21 governing the reporting of HIV-exposed infants

22 or newborns; deleting a provision requiring the

23 reporting of diagnosed AIDS cases based upon

24 certain criteria; deleting a provision

25 requiring that physicians and laboratories

26 report certain cases of HIV infection; deleting

27 a requirement that the department submit an

28 annual report to the Legislature; amending s.

29 384.31, F.S.; requiring that certain health

30 care professionals who attend a pregnant woman

31 test for sexually transmissible diseases and

Bill No. SB 186

Barcode 391288

1 HIV; requiring that a pregnant woman be
2 informed of an HIV test and her right to
3 refuse; requiring that a written statement of
4 objection to HIV testing be placed in the
5 pregnant woman's medical records; deleting a
6 requirement that a health care provider counsel
7 a pregnant woman concerning HIV testing;
8 deleting a provision that provides immunity
9 from liability to a health care provider who
10 counsels a pregnant woman who objects to HIV
11 testing; providing an effective date.
12

13 Be It Enacted by the Legislature of the State of Florida:
14

15 Section 1. Paragraphs (d) and (h) of subsection (3) of
16 section 381.004, Florida Statutes, are amended to read:

17 381.004 HIV testing.--

18 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
19 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

20 (d) ~~A positive preliminary No test result shall be~~
21 ~~determined as positive, and no positive test result may not~~
22 ~~shall be revealed to any person, without corroborating or~~
23 ~~confirmatory tests being conducted~~ except in the following
24 situations:

25 1. Preliminary test results may be released to
26 licensed physicians or the medical or nonmedical personnel
27 subject to the significant exposure for purposes of
28 subparagraphs (h)10., 11., and 12.

29 2. Preliminary test results may be released to health
30 care providers and to the person tested when decisions about
31 medical care or treatment of, or recommendation to, the person

Bill No. SB 186

Barcode 391288

1 tested and, in the case of an intrapartum or postpartum woman,
2 when care, treatment, or recommendations regarding her
3 newborn, cannot await the results of confirmatory testing.
4 Positive preliminary HIV test results may ~~shall~~ not be
5 characterized to the patient as a diagnosis of HIV infection.
6 Justification for the use of preliminary test results must be
7 documented in the medical record by the health care provider
8 who ordered the test.

9 3. The results of rapid testing technologies shall be
10 considered preliminary and may be released in accordance with
11 the manufacturer's instructions as approved by the federal
12 Food and Drug Administration. ~~This subparagraph does not~~
13 ~~authorize the release of preliminary test results for the~~
14 ~~purpose of routine identification of HIV-infected individuals~~
15 ~~or when HIV testing is incidental to the preliminary diagnosis~~
16 ~~or care of a patient.~~

17 4. Corroborating or confirmatory testing must be
18 conducted as followup to a positive preliminary test. Results
19 shall be communicated to the patient according to statute
20 regardless of the outcome. Except as provided in this section,
21 test results are confidential and exempt from the provisions
22 of s. 119.07(1).

23 (h) Notwithstanding the provisions of paragraph (a),
24 informed consent is not required:

25 1. When testing for sexually transmissible diseases is
26 required by state or federal law, or by rule including the
27 following situations:

28 a. HIV testing pursuant to s. 796.08 of persons
29 convicted of prostitution or of procuring another to commit
30 prostitution.

31 b. HIV testing of inmates pursuant to s. 945.355 prior

Bill No. SB 186

Barcode 391288

1 to their release from prison by reason of parole, accumulation
2 of gain-time credits, or expiration of sentence.

3 c. Testing for HIV by a medical examiner in accordance
4 with s. 406.11.

5 d. HIV testing of pregnant women pursuant to s.
6 384.31.

7 2. Those exceptions provided for blood, plasma,
8 organs, skin, semen, or other human tissue pursuant to s.
9 381.0041.

10 3. For the performance of an HIV-related test by
11 licensed medical personnel in bona fide medical emergencies
12 when the test results are necessary for medical diagnostic
13 purposes to provide appropriate emergency care or treatment to
14 the person being tested and the patient is unable to consent,
15 as supported by documentation in the medical record.
16 Notification of test results in accordance with paragraph (c)
17 is required.

18 4. For the performance of an HIV-related test by
19 licensed medical personnel for medical diagnosis of acute
20 illness where, in the opinion of the attending physician,
21 obtaining informed consent would be detrimental to the
22 patient, as supported by documentation in the medical record,
23 and the test results are necessary for medical diagnostic
24 purposes to provide appropriate care or treatment to the
25 person being tested. Notification of test results in
26 accordance with paragraph (c) is required if it would not be
27 detrimental to the patient. This subparagraph does not
28 authorize the routine testing of patients for HIV infection
29 without informed consent.

30 5. When HIV testing is performed as part of an autopsy
31 for which consent was obtained pursuant to s. 872.04.

Barcode 391288

1 6. For the performance of an HIV test upon a defendant
2 pursuant to the victim's request in a prosecution for any type
3 of sexual battery where a blood sample is taken from the
4 defendant voluntarily, pursuant to court order for any
5 purpose, or pursuant to the provisions of s. 775.0877, s.
6 951.27, or s. 960.003; however, the results of any HIV test
7 performed shall be disclosed solely to the victim and the
8 defendant, except as provided in ss. 775.0877, 951.27, and
9 960.003.

10 7. When an HIV test is mandated by court order.

11 8. For epidemiological research pursuant to s.
12 381.0032, for research consistent with institutional review
13 boards created by 45 C.F.R. part 46, or for the performance of
14 an HIV-related test for the purpose of research, if the
15 testing is performed in a manner by which the identity of the
16 test subject is not known and may not be retrieved by the
17 researcher.

18 9. When human tissue is collected lawfully without the
19 consent of the donor for corneal removal as authorized by s.
20 765.5185 or enucleation of the eyes as authorized by s.
21 765.519.

22 10. For the performance of an HIV test upon an
23 individual who comes into contact with medical personnel in
24 such a way that a significant exposure has occurred during the
25 course of employment or within the scope of practice and where
26 a blood sample is available that was taken from that
27 individual voluntarily by medical personnel for other
28 purposes. The term "medical personnel" includes a licensed or
29 certified health care professional; an employee of a health
30 care professional or health care facility; employees of a
31 laboratory licensed under chapter 483; personnel of a blood

Barcode 391288

1 bank or plasma center; a medical student or other student who
2 is receiving training as a health care professional at a
3 health care facility; and a paramedic or emergency medical
4 technician certified by the department to perform life-support
5 procedures under s. 401.23.

6 a. Prior to performance of an HIV test on a
7 voluntarily obtained blood sample, the individual from whom
8 the blood was obtained shall be requested to consent to the
9 performance of the test and to the release of the results.
10 The individual's refusal to consent and all information
11 concerning the performance of an HIV test and any HIV test
12 result shall be documented only in the medical personnel's
13 record unless the individual gives written consent to entering
14 this information on the individual's medical record.

15 b. Reasonable attempts to locate the individual and to
16 obtain consent shall be made, and all attempts must be
17 documented. If the individual cannot be found, an HIV test may
18 be conducted on the available blood sample. If the individual
19 does not voluntarily consent to the performance of an HIV
20 test, the individual shall be informed that an HIV test will
21 be performed, and counseling shall be furnished as provided in
22 this section. However, HIV testing shall be conducted only
23 after a licensed physician documents, in the medical record of
24 the medical personnel, that there has been a significant
25 exposure and that, in the physician's medical judgment, the
26 information is medically necessary to determine the course of
27 treatment for the medical personnel.

28 c. Costs of any HIV test of a blood sample performed
29 with or without the consent of the individual, as provided in
30 this subparagraph, shall be borne by the medical personnel or
31 the employer of the medical personnel. However, costs of

Bill No. SB 186

Barcode 391288

1 testing or treatment not directly related to the initial HIV
2 tests or costs of subsequent testing or treatment ~~may shall~~
3 not be borne by the medical personnel or the employer of the
4 medical personnel.

5 d. In order to utilize the provisions of this
6 subparagraph, the medical personnel must either be tested for
7 HIV pursuant to this section or provide the results of an HIV
8 test taken within 6 months prior to the significant exposure
9 if such test results are negative.

10 e. A person who receives the results of an HIV test
11 pursuant to this subparagraph shall maintain the
12 confidentiality of the information received and of the persons
13 tested. Such confidential information is exempt from s.
14 119.07(1).

15 f. If the source of the exposure will not voluntarily
16 submit to HIV testing and a blood sample is not available, the
17 medical personnel or the employer of such person acting on
18 behalf of the employee may seek a court order directing the
19 source of the exposure to submit to HIV testing. A sworn
20 statement by a physician licensed under chapter 458 or chapter
21 459 that a significant exposure has occurred and that, in the
22 physician's medical judgment, testing is medically necessary
23 to determine the course of treatment constitutes probable
24 cause for the issuance of an order by the court. The results
25 of the test shall be released to the source of the exposure
26 and to the person who experienced the exposure.

27 11. For the performance of an HIV test upon an
28 individual who comes into contact with medical personnel in
29 such a way that a significant exposure has occurred during the
30 course of employment or within the scope of practice of the
31 medical personnel while the medical personnel provides

Barcode 391288

1 emergency medical treatment to the individual; or who comes
2 into contact with nonmedical personnel in such a way that a
3 significant exposure has occurred while the nonmedical
4 personnel provides emergency medical assistance during a
5 medical emergency. For the purposes of this subparagraph, a
6 medical emergency means an emergency medical condition outside
7 of a hospital or health care facility that provides physician
8 care. The test may be performed only during the course of
9 treatment for the medical emergency.

10 a. An individual who is capable of providing consent
11 shall be requested to consent to an HIV test prior to the
12 testing. The individual's refusal to consent, and all
13 information concerning the performance of an HIV test and its
14 result, shall be documented only in the medical personnel's
15 record unless the individual gives written consent to entering
16 this information on the individual's medical record.

17 b. HIV testing shall be conducted only after a
18 licensed physician documents, in the medical record of the
19 medical personnel or nonmedical personnel, that there has been
20 a significant exposure and that, in the physician's medical
21 judgment, the information is medically necessary to determine
22 the course of treatment for the medical personnel or
23 nonmedical personnel.

24 c. Costs of any HIV test performed with or without the
25 consent of the individual, as provided in this subparagraph,
26 shall be borne by the medical personnel or the employer of the
27 medical personnel or nonmedical personnel. However, costs of
28 testing or treatment not directly related to the initial HIV
29 tests or costs of subsequent testing or treatment ~~may shall~~
30 not be borne by the medical personnel or the employer of the
31 medical personnel or nonmedical personnel.

Bill No. SB 186

Barcode 391288

1 d. In order to utilize the provisions of this
2 subparagraph, the medical personnel or nonmedical personnel
3 shall be tested for HIV pursuant to this section or shall
4 provide the results of an HIV test taken within 6 months prior
5 to the significant exposure if such test results are negative.

6 e. A person who receives the results of an HIV test
7 pursuant to this subparagraph shall maintain the
8 confidentiality of the information received and of the persons
9 tested. Such confidential information is exempt from s.
10 119.07(1).

11 f. If the source of the exposure will not voluntarily
12 submit to HIV testing and a blood sample was not obtained
13 during treatment for the medical emergency, the medical
14 personnel, the employer of the medical personnel acting on
15 behalf of the employee, or the nonmedical personnel may seek a
16 court order directing the source of the exposure to submit to
17 HIV testing. A sworn statement by a physician licensed under
18 chapter 458 or chapter 459 that a significant exposure has
19 occurred and that, in the physician's medical judgment,
20 testing is medically necessary to determine the course of
21 treatment constitutes probable cause for the issuance of an
22 order by the court. The results of the test shall be released
23 to the source of the exposure and to the person who
24 experienced the exposure.

25 12. For the performance of an HIV test by the medical
26 examiner or attending physician upon an individual who expired
27 or could not be resuscitated while receiving emergency medical
28 assistance or care and who was the source of a significant
29 exposure to medical or nonmedical personnel providing such
30 assistance or care.

31 a. HIV testing may be conducted only after a licensed

Bill No. SB 186

Barcode 391288

1 physician documents in the medical record of the medical
2 personnel or nonmedical personnel that there has been a
3 significant exposure and that, in the physician's medical
4 judgment, the information is medically necessary to determine
5 the course of treatment for the medical personnel or
6 nonmedical personnel.

7 b. Costs of any HIV test performed under this
8 subparagraph may not be charged to the deceased or to the
9 family of the deceased person.

10 c. For the provisions of this subparagraph to be
11 applicable, the medical personnel or nonmedical personnel must
12 be tested for HIV under this section or must provide the
13 results of an HIV test taken within 6 months before the
14 significant exposure if such test results are negative.

15 d. A person who receives the results of an HIV test
16 pursuant to this subparagraph shall comply with paragraph (e).

17 13. For the performance of an HIV-related test
18 medically indicated by licensed medical personnel for medical
19 diagnosis of a hospitalized infant as necessary to provide
20 appropriate care and treatment of the infant when, after a
21 reasonable attempt, a parent cannot be contacted to provide
22 consent. The medical records of the infant shall reflect the
23 reason consent of the parent was not initially obtained. Test
24 results shall be provided to the parent when the parent is
25 located.

26 14. For the performance of HIV testing conducted to
27 monitor the clinical progress of a patient previously
28 diagnosed to be HIV positive.

29 15. For the performance of repeated HIV testing
30 conducted to monitor possible conversion from a significant
31 exposure.

Bill No. SB 186

Barcode 391288

1 Section 2. Section 384.25, Florida Statutes, is
2 amended to read:

3 384.25 Reporting required.--

4 (1) Each person who makes a diagnosis of or treats a
5 person with a sexually transmissible disease and each
6 laboratory that performs a test that ~~for a sexually~~
7 ~~transmissible disease which~~ concludes with a positive result
8 for a sexually transmissible disease or a result indicative of
9 human immunodeficiency virus (HIV) or acquired immune
10 deficiency syndrome (AIDS) shall report such facts as may be
11 required by the department by rule, within a time period as
12 specified by rule of the department, but in no case to exceed
13 2 weeks.

14 (2) The department shall adopt rules specifying the
15 information required ~~in~~ and the maximum ~~a minimum~~ time period
16 for reporting a sexually transmissible disease. In adopting
17 such rules, the department shall consider the need for
18 information, protections for the privacy and confidentiality
19 of the patient, and the practical ability of persons and
20 laboratories to report in a reasonable fashion.

21 (3) To ensure the confidentiality of persons infected
22 with the human immunodeficiency virus (HIV), reporting of HIV
23 infection and ~~acquired immune deficiency syndrome (AIDS)~~ must
24 be conducted using a system ~~the HIV/AIDS Reporting System~~
25 ~~(HARS)~~ developed by the Centers for Disease Control and
26 Prevention of the United States Public Health Service or an
27 equivalent system.

28 (a) The department shall adopt rules requiring each
29 physician and laboratory to report any newborn or infant up to
30 18 months of age who has been exposed to HIV. Such rules may
31 include the method and time period for reporting, which may

Bill No. SB 186

Barcode 391288

1 not exceed 2 weeks, information to be included in the report,
2 enforcement requirements, and follow-up activities by the
3 department.

4 ~~(3) The department shall require reporting of~~
5 ~~physician diagnosed cases of AIDS based upon diagnostic~~
6 ~~criteria from the Centers for Disease Control and Prevention.~~

7 ~~(b)(4) The department may require physician and~~
8 ~~laboratory reporting of HIV infection. However, only reports~~
9 ~~of HIV infection identified on or after the effective date of~~
10 ~~the rule developed by the department pursuant to this~~
11 ~~subsection shall be accepted. The reporting may not affect or~~
12 ~~relate to anonymous HIV testing programs conducted pursuant to~~
13 ~~s. 381.004(4) or to university-based medical research~~
14 ~~protocols as determined by the department.~~

15 ~~(c)(5) After notification of the test subject under~~
16 ~~subsection (4), the department may, with the consent of the~~
17 ~~test subject, notify school superintendents of students and~~
18 ~~school personnel whose HIV tests are positive.~~

19 ~~(6) The department shall by February 1 of each year~~
20 ~~submit to the Legislature an annual report relating to all~~
21 ~~information obtained pursuant to this section.~~

22 ~~(3)(7) Each person who violates the provisions of this~~
23 ~~section or the rules adopted hereunder may be fined by the~~
24 ~~department up to \$500 for each offense. The department shall~~
25 ~~report each violation of this section to the regulatory agency~~
26 ~~responsible for licensing each health care professional and~~
27 ~~each laboratory to which these provisions apply.~~

28 Section 3. Section 384.31, Florida Statutes, is
29 amended to read:

30 384.31 Serological testing of pregnant women; duty of
31 the attendant.--

Bill No. SB 186

Barcode 391288

1 ~~(1)~~ Every person, including every physician licensed
2 under chapter 458 or chapter 459 or midwife licensed under
3 part I of chapter 464 or chapter 467, attending a pregnant
4 woman for conditions relating to pregnancy during the period
5 of gestation and delivery shall ~~take or~~ cause the woman to be
6 tested for sexually transmissible diseases, including HIV, as
7 ~~taken a sample of venous blood at a time or times~~ specified by
8 ~~the department rule. Testing Each sample of blood~~ shall be
9 performed ~~tested~~ by a laboratory approved for such purposes
10 under part I of chapter 483 for sexually transmissible
11 diseases as required by rule of the department. The woman
12 shall be informed of the tests that will be conducted and of
13 her right to refuse HIV testing. If the pregnant woman objects
14 to HIV testing, a written statement of objection, signed by
15 the woman, shall be placed in the patient's medical record,
16 and the HIV testing may not occur.

17 ~~(2)~~ At the time the venous blood sample is taken,
18 ~~testing for human immunodeficiency virus (HIV) infection shall~~
19 ~~be offered to each pregnant woman. The prevailing professional~~
20 ~~standard of care in this state requires each health care~~
21 ~~provider and midwife who attends a pregnant woman to counsel~~
22 ~~the woman to be tested for human immunodeficiency virus (HIV).~~
23 ~~Counseling shall include a discussion of the availability of~~
24 ~~treatment if the pregnant woman tests HIV positive. If a~~
25 ~~pregnant woman objects to HIV testing, reasonable steps shall~~
26 ~~be taken to obtain a written statement of such objection,~~
27 ~~signed by the patient, which shall be placed in the patient's~~
28 ~~medical record. Every person, including every physician~~
29 ~~licensed under chapter 458 or chapter 459 or midwife licensed~~
30 ~~under part I of chapter 464 or chapter 467, who attends a~~
31 ~~pregnant woman who has been offered and objects to HIV testing~~

Bill No. SB 186

Barcode 391288

1 ~~shall be immune from liability arising out of or related to~~
2 ~~the contracting of HIV infection or acquired immune deficiency~~
3 ~~syndrome (AIDS) by the child from the mother.~~

4 Section 4. This act shall take effect upon becoming a
5 law.

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